

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

SUMMIT EQUIPMENT & SUPPLIES, INC.,
BENJAMIN J. HIRSCH; NAVISTAR
INTERNATIONAL CORP.; OWENS-ILLINOIS, INC.;
CITY OF CLEVELAND, OHIO; ARVINMERITOR,
INC.; (on behalf of Rockwell Standard Division of
Rockwell International Corp.);
BRIDGESTONE/FIRESTONE NORTH AMERICAN,
TIRE, LLC; CLARK EQUIPMENT CO.; CLEVELAND
STEEL CONTAINER CORP; CSX
TRANSPORTATION, INC. (a wholly-owned subsidiary
of CSX Corp.); CURTISS-WRIGHT CORP. (and its
wholly-owned subsidiary, The Marquette Metal Products
Co.); DAIMLERCHRYSLER CORP.; EATON CORP.;
GATX CORP.; GENERAL MOTORS CORP.;
GIDDINGS & LEWIS, LLC (n/k/a w known as
GLH, LLC; G & L USA, LLC; and Giddings &
Lewis Machine Tools, LLC, on behalf of themselves and
Warner & Swasey Division of Bendix
Automation Co.); HONEYWELL INTERNATIONAL,
INC. (on behalf of Warner Swasey Division of Bendix
Automation, Bendix Corp., and Allied Signal, Inc.);
LAFARGE NORTH AMERICA, INC.,
(as the successor in interest to General Portland, Inc.);
LEAR SIEGLER DIVERSIFIED HOLDINGS (as the
successor in interest to Lear Siegler, Inc.); MCNEIL &
NRM, INC.; ROLLS-ROYCE NORTH
AMERICA INC. (as the successor in interest to the
Parson Peebles Electric Co.); SPANG & COMPANY;
VIACOM INC., (successor by merger with CBS
Corporation f/k/a Westinghouse Electric Corporation)

Defendants.

CIVIL ACTION NO.

5:90CV1704

**UNITED STATES'
FIRST AMENDED
COMPLAINT**

FIRST AMENDED COMPLAINT

Plaintiff, the United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA") and the United States Defense Logistics Agency ("DLA"), an agency within the United States Department of Defense, files this first amended complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action brought by the United States, on behalf EPA and DLA, pursuant to Sections 107(a) and 113(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9607(a) and 9613(f), as amended ("CERCLA"). The United States seeks to recover response costs which it has incurred in conducting response activities as a result of releases and threatened release of hazardous substances into the environment at the Summit Equipment & Supplies, Inc. Site ("SES Site") located at or near 875 Ivor Avenue in Akron, Ohio. The United States also seeks a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), declaring that all the Defendants will be liable for any further response costs that the United States may incur as a result of releases or threatened release of hazardous substances into the environment at the SES Site and any area to which contamination may have migrated from the SES Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331 and 1345.
3. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C.

§ 9613(b), and 28 U.S.C. § 1391(b) and © because the claims arose and the threatened and actual releases of hazardous substances occurred in this district.

THE DEFENDANTS

4. Summit Equipment & Supplies, Inc., is a firm, corporation or business entity that operates or operated a facility in the State of Ohio and otherwise does or did business in the State of Ohio. At all times relevant to this first amended complaint, Summit operated a former salvage and scrap yard, located at or near 875 Ivor Avenue in Akron, Ohio, at which it stored and scrapped metal from used electrical and industrial equipment and miscellaneous discarded items. Upon information and belief, Summit may now be doing business at 1190 Home Avenue in Akron, Ohio.

5. Benjamin J. Hirsch is an individual person and a resident of the State of Ohio, whose last known address was 75 North Portage Path, Apt. #607 in Akron, Ohio. Hirsch is/was the president and sole stockholder and owner of Summit Equipment & Supplies, Inc. Benjamin Hirsch is also the owner of record of the property on which the Site is situated. Benjamin Hirsch managed the activities, affairs, and business at Summit Equipment & Supplies, Inc., including the activities which gave rise to this action.

6. The following Defendants (hereinafter the "Generator Defendants") owned or possessed hazardous substances and by contract, agreement, or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of such hazardous substances, which came to be located at the SES Site: ArvinMeritor, Inc. (on behalf of the Rockwell Standard Division of Rockwell International Corp.); Bridgestone/Firestone North American Tire, LLC; City of Cleveland, Ohio; Clark Equipment Co.; Cleveland Steel Container

Corp.; Curtiss-Wright Corp. (and its wholly-owned subsidiary, The Marquette Metal Products Co.); CSX Transportation, Inc. (a wholly-owned subsidiary of CSX Corp.); DaimlerChrysler Corp.; Eaton Corp.; GATX Corp; General Motors Corp.; Giddings & Lewis, LLC, (n/k/a GLH, LLC; G & L USA, LLC; and Giddings & Lewis Machine Tools, LLC, on behalf of themselves and the Warner & Swasey Division of Bendix Automation Company); Honeywell International, Inc. (on behalf of Warner Swasey Division of Bendix Automation, Bendix Corp., and Allied Signal, Inc.); LaFarge North America, Inc. (as the successor in interest to General Portland, Inc.); Lear Siegler Diversified Holdings (as the successor in interest to Lear Siegler, Inc.); McNeil & NRM, Inc.; Navistar International Corp.; Owens-Illinois, Inc.; Rolls-Royce North America Inc. (as the successor in interest to the Parson Peebles Electric Co.); Spang & Company; Viacom Inc. (as the successor by merger with CBS Corporation f/k/a Westinghouse Electric Corporation).

THE SES SITE

7. The SES Site, approximately six acres in size, is located at or near 875 Ivor Avenue, Akron, Ohio and one-half mile south of the Interstate-76 and Interstate-277/State Route 224 interchange. The SES Site is bordered by the Akron/Barberton Beltway Railroad tracks to the North; a low-lying woodland and marsh to the east, which is immediately adjacent to Lake Nesmith; a light industrial area to the west; and a residential area on Ivor Avenue to the south.

8. Defendants, Summit Equipment & Supplies Inc., and Benjamin Hirsch, operated and used the SES Site as a scrap metal processing operation which became engaged in the salvage and disposal of used electrical and industrial equipment and miscellaneous discarded items since, at least, the 1960s until the mid-1980s. In operating the SES Site, those Defendants, stored, salvaged and disposed of used industrial equipment, among other items, containing

Polychlorinated Biphenyls (PCBs), copper, mercury, lead and other metals at the SES Site. Consequently, by 1987, the SES Site was covered over most of its surface with contiguous piles of scrap and debris 20 to 30 feet in height. Metals reclaimed from equipment were at times smelted in a small furnace, fired by a PCB transformer, located adjacent to the SES Site's office.

GENERAL ALLEGATIONS

9. On or about July 31, 1986, in response to a complaint from the Akron Police Department, the Ohio Environmental Protection Agency, Office of Emergency Response (OEPA/OER) conducted a compliance inspection at the SES Site.

10. OEPA/OER inspectors observed numerous transformers, electrical capacitors and other scrap and equipment and the presence of hazardous substances at the SES Site.

11. In February 1987, at the request of OEPA/OER, EPA performed a site investigation at the SES Site which confirmed the presence of hundreds of transformer casings, among other used equipment, containing hazardous substances, including PCBs.

12. In March 1987, the Regional Administrator of EPA, Region V, authorized a removal action at the SES Site within the meaning of Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1), which included: site stabilization activities to minimize the likelihood of on-going and future releases of hazardous substances; various studies, including studies to evaluate the extent of contamination on-site and off-site from the release of hazardous substances; the development of implementation plans related to safety, community relations, and security and the construction of on-site roadways; and excavation of soil on-site as well as off-site.

13. During 1987, EPA conducted a removal action to address the on-site and off-site threat from the release and threat of release of hazardous substances, including site stabilization

activities and removal of on-site and off-site PCB contaminated materials. Additional testing and studies conducted during the removal action confirmed the widespread presence of hazardous substances at the SES Site, including PCBs, copper, mercury, and lead, among others. Such substances were found in the surface and subsurface soils and sediment. The groundwater at the SES Site was also found to be contaminated with hazardous substances, including PCBs and metals.

14. In response to the release or threat of release of hazardous substances at the SES Site, EPA continued to conduct a removal action, including site investigations, inspections, and other types of response action from approximately 1987-1991.

15. In or around May 1991, EPA suspended its response activities after uncovering military ordnance.

16. In July 1991, EPA and DLA entered into an Administrative Order by Consent, which required DLA to implement additional site investigations and other response actions selected by EPA, and to conduct future site investigations and removal and remedial actions.

17. On or about June 30, 1998, EPA issued the Record of Decision (ROD) for remediation of the SES Site. Under the ROD, the remedial action for the soil at the SES Site was: (1) excavation and off-site disposal of soils contaminated with PCBs, copper, and mercury until established clean-up objectives were met; and (2) removal of unexploded ordnance. The groundwater remedial action selected in the ROD for the SES Site was monitored natural attenuation of the groundwater at the SES Site for thirty years, through semi-annually monitoring for the first five years, and annually thereafter.

18. To address the soil contamination at the SES Site from PCBs, copper, and mercury, DLA excavated for off-site disposal more than 65,000 tons of soil, debris and other material, at a cost of around \$11 million dollars. The soil remedial action was completed in November 2000.

19. In August 2002, EPA found that the soil remediation for the SES Site was successfully completed and closed out this aspect of the remedy.

20. In August 2003, EPA issued its first Five-Year Review Site Report to assess whether remaining remedial actions being implemented at the Site are protective of human health and the environment. Based upon groundwater monitoring results, the Report indicated that virtually all hazardous substances of concern have fallen below their remedial goals, and the groundwater remedy is being implemented successfully at the Site.

21. To date, as a result of the releases or threatened releases of hazardous substances from the SES Site, the United States has incurred over \$22 million in response costs, including, but not limited to, administrative and enforcement costs and interest, and will continue to incur such response costs at or in connection with the SES Site. The United States' past response costs relating to the Site include over \$3.5 million incurred by EPA or by the Department of Justice, on behalf of EPA, and over \$19 million incurred by DLA.

22. In or around March 1987, EPA notified Benjamin J. Hirsch and Summit Equipment & Supplies, Inc., of their liability for response actions and costs under CERCLA and requested payment of costs incurred.

23. On or about March 29, 1991, in a demand letter, EPA again notified Benjamin J. Hirsch and Summit Equipment & Supplies, Inc., of their liability for response actions and costs

under CERCLA and requested payment of costs incurred, and similarly notified several of the Generator Defendants.

24. The United States has not been reimbursed for any response costs that it has incurred at or in connection with the Site.

FIRST CLAIM FOR RELIEF

(Owner/Operator Claim)

25. Paragraphs 1 through 24 are realleged and incorporated herein by reference.

26. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section—

- (1) the owner and operator of a vessel or a facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person ... at any facility . . . [shall be liable for],

* * *

- (A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan. . . .

27. Benjamin J. Hirsch and Summit Equipment & Supplies, Inc., are each a “person,” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

28. The SES Site is a “facility” as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

29. At times relevant to this action, there have been “releases” and “threatened releases” of “hazardous substances” into the environment at or from the SES Site, within the meaning of Sections 101(14) and 101(22) of CERCLA, 42 U.S.C. § 9601(14) and (22), including, but not limited to, PCBs, copper and mercury.

30. Defendant Benjamin J. Hirsch is liable under Section 107(a)(1) and (a)(2) of CERCLA, 42 U.S.C. § 9607(a)(1) and (a)(2), because he owns the SES Site and because he owned and operated the SES Site during the period in which hazardous substances were disposed of at the SES Site.

31. Defendant Summit Equipment & Supplies, Inc., is liable under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), because it owned and operated the SES Site during the period in which hazardous substances were disposed of at the SES Site.

32. The United States has incurred and will continue to incur “response costs,” as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), for actions taken in response to the release or threatened release of hazardous substances at or from the SES Site.

33. The United States’ response actions taken by EPA and DLA at the SES Site and the costs incurred incident thereto were not inconsistent with the National Contingency Plan (NCP), which was promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and is codified at 40 C.F.R. Part 300.

34. Pursuant to Sections 107(a) and 113(f) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(f), Defendants, Benjamin J. Hirsch and Summit Equipment & Supplies, Inc., are liable to the United States for response costs incurred or that will be incurred by DLA, or on behalf of DLA, in connection with the SES Site, including enforcement costs, and prejudgment interest on such response costs.

35. Pursuant to Sections 107(a) of CERCLA, 42 U.S.C. § 9607(a), Defendants, Benjamin J. Hirsch and Summit Equipment & Supplies, Inc., are liable to the United States for all response costs incurred or that will be incurred by EPA, or on behalf of EPA, in connection with the SES Site, including enforcement costs, and prejudgment interest on such response costs.

SECOND CLAIM FOR RELIEF

(Generator Claim)

36. Paragraphs 1 through 35 are realleged and incorporated herein by reference.

37. The Generator Defendants are each a “person,” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

38. Each of the Generator Defendants is within the class of liable persons described in Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), because each arranged for the disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances, which came to be located at the Site, that they owned or possessed.

39. Pursuant to Sections 107(a) and 113(f) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(f), the Generator Defendants are liable to the United States for response costs incurred or that will be incurred by DLA, or on behalf of DLA, in connection with the SES Site, including

enforcement costs, and prejudgment interest on such response costs.

40. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), the Generator Defendants are liable to the United States for all response costs incurred or that will be incurred by EPA, or on behalf of EPA, in connection with the SES Site, including enforcement costs, and prejudgment interest on such response costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that this Court:

1. Enter judgment in favor of the United States and against the above-named Defendants for all costs incurred by EPA, or on behalf of EPA, including enforcement costs, and prejudgment interest, for response actions in connection with the Site;

2. Enter judgment in favor of the United States and against each of the above-named Defendants for costs incurred by DLA, or on behalf of DLA, including enforcement costs, and prejudgment interest, for response actions in connection with the Site;

3. Enter a declaratory judgment in favor of the United States and against the above-named Defendants pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that those Defendants are liable for future response costs incurred by EPA and DLA, or on behalf of EPA and DLA, in connection with the SES Site and any area to which hazardous substances released at the Site may have migrated;

4. Award the United States its costs of this action; and

5. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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